

# **An Overview of Reasonable Accommodation and Reasonable Modification Provisions of the Fair Housing Amendments Act**

## **Definition**

The Fair Housing Amendments Act defines reasonable accommodation and reasonable modification as follows:

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or <sup>1</sup>

**Need for RA & RM:** The most obvious need for a reasonable accommodation or a reasonable modification request is to remove barriers to housing opportunity for persons with disabilities and their families . Barriers, which prevent persons with disabilities from the full enjoyment and use of the premises that is equitable to those of non-disabled persons, are not always physical structural issues but can be policies, practices, procedures and in many cases attitudinal. Reasonable accommodation and reasonable modification requests enable persons with disabilities to remove those barriers or at the very least to make them less onerous. Reasonable modification requests are particularly important in privately funded multi-family housing that was first occupied prior to March 13, 1991. There is a nationwide shortage of accessible housing so these type of requests play a key role in opening up additional housing options for persons with disabilities and their families. Reasonable accommodations can expand suitable housing opportunities by allowing flexibility in procedures and policies that are supportive of persons with disabilities.

## **Nature of Disabilities Overview:**

In order to properly negotiate or mediate reasonable accommodation and reasonable modifications, one must have a basic understanding of the nature of disabilities. This does not mean that an investigator must understand the medical background of each disability. Persons with disabilities are no different than persons without disabilities in that no two individuals are exactly alike. A reasonable accommodation or modification that works very well for one person may not be suitable for another individual with the same disability. There are differences in severity, remission rates, functioning ability, etc. Factors such as environment, climate, age and stress all effect one's ability to function with their disability. Societal factors such as access to assistive technology, support services and quality healthcare also impacts the ability of the individual.

As medical science expands, knowledge and diagnosis of new disabilities grows. In that context it is important to remember the FHAA definition of disability:

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<sup>1</sup> FHAA Sec. 804[42.U.S.C.3504] (A) (B)

- (h) "Handicap" means, with respect to a person--
- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
  - (2) a record of having such an impairment, or
  - (3) being regarded as having such impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).<sup>2</sup>

This is a functional based definition as opposed to a list of government approved disabilities. This functional definition actually makes it easier to determine the appropriateness of a reasonable accommodations or reasonable modification request. An investigator does not have to become an instant expert on a specific disability. Instead the focus is on a major life function and if the reasonable accommodation or modification will provide the needed access. If a person has difficulty walking and requests a closer parking space, the focus is on the function of walking and whether the closer space is needed.

### **Types of Reasonable Accommodation and Reasonable Modification Requests:**

Adaptive Environments, through its management of the Fair Housing Accessibility First Design and Construction Resource Center (DCRC), has received hundreds of requests for technical assistance on reasonable accommodations and reasonable modifications. Many of these situations involve a combination of both. Most often these types of calls are involving condominium associations. Many condo associations have very strict policies regarding physical alterations to the units. The person with the disability has to negotiate first the reasonable accommodation request to waive the policy and then follow-up with a reasonable modification request to make the needed physical alteration. Another common reasonable accommodation question is the need for an early termination of a lease either due to the onset of a disability or the worsening of a pre-existing condition. Parking is one of the DCRC's largest areas of calls. These range from the request for a closer parking space, the designation of an accessible space for the caller or the creation of a new accessible parking space

One of the more misunderstood areas of reasonable accommodation and reasonable modification is how it applies to persons who use assistive animals. Property owners and managers may be familiar with a service animals such as a "seeing eye dog", but are unfamiliar with other types of assistive animals such as alerting or signal animals. Based on the DCRC calls, probably the most controversial is that of companion animals. Companion animals, often times referred to as emotional support animals, provide a valuable service to persons with mental illness. The animals provide emotional support and a calming influence especially for those with anxiety disorders and in general are a stabilizing force in that individual's life. Even when the property owner or manager understands the concept of assistance animals, they are unclear as to how pet fees such as deposits, additional rent or increased liability policies are handled under the reasonable accommodation provision. More education of property owners and managers are needed on assistive animals. For additional information regarding emotional support animals please refer to the Bazelon Center info sheet listed at the end of this document.

Some of our more intriguing reasonable accommodations calls have been concerning smoke-free housing, no fragrance policies, vehicle limitations such as size & type, zoning, security measures that limit the access of persons with disabilities, "quiet environments" and control of the unit temperature. In the area of reasonable modifications, the DCRC has received calls regarding inaccessible locking systems such as card entry doors, mold eradication, aesthetics

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<sup>2</sup> FHAA Sec. 802 [42U.S.C.3602] (h)

issues hampering accessibility, prevention of slipping hazards due to poor tree management and ramp maintenance.

### **Problem Solving**

If there is a thread that connects all these requests, it is the lack of negotiation between the resident making the request and the property owner/manager. It is typically a case of one side making a demand and the other side unilaterally rejecting such requests. These mindsets provide the biggest barrier to providing access to housing. The biggest differences of opinion are the issues of undue burden and assumption of reasonable modification costs. It is difficult for either party to accept the need for compromise. This limits the ability of parties to develop useful and creative solutions to the common problem. While the DCRC does not negotiate, mediate or investigate allegations of FHAA violations on reasonable accommodation and reasonable modifications, we often recommend that all parties re-open discussions on the matter at hand. Our staff will provide technical assistance that will address the identified access problem. The DCRC often refers parties to the Independent Living Centers (a web listing of IL Centers is provided below) or assistive technology projects in their area for assistance in determining what may be the best technical remedy for the lack of accessibility. If all else fails we refer them to the FHAPs or FHEOs so a complaint may be filed.

### **Conclusion:**

As mentioned earlier, reasonable accommodations and modifications address vital needs for access for persons with disabilities. These needs must be balanced against the possibility of undue burdens on owners and property managers. By stressing the focus on the resident's functional needs and reasonable ways of achieving accessibility, the process could be fair to all.

### **Web Resources:**

**Fair Housing Accessibility First:** [www.fairhousingfirst.org](http://www.fairhousingfirst.org)

**Bazelon Center for Mental Health Law Project : Fair Housing Information Sheet # 6**

**Right To Emotional Support Animals In "No Pet" Housing:**

<http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html>

**JOINT STATEMENT OF  
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND THE DEPARTMENT OF JUSTICE  
REASONABLE ACCOMMODATIONS UNDER THE  
FAIR HOUSING ACT**

<http://www.hud.gov/utilities/intercept.cfm?offices/fheo/library/huddojstatement.pdf>

**Directory of Independent Living Centers**

<http://www.virtualcil.net/cils/>